Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Federal-State Joint Board on	)	
Universal Service Seeks Comment	)	
On Proposals to Modify the Commission's	)	
Rules Relating to High-Cost Universal	)	
Service Support	)	

COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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EXECUTIVE SUMMARY

OPASTCO is unable to support any of the proposals in the Public Notice as they would all impede the continued achievement of the universal service objectives of the 1996 Act and the Commission in the areas served by rural telephone companies. Alteration of the existing high-cost support mechanism for rural ILECs is neither necessary nor desirable. Where reform is needed is in the portability rules for competitive ETCs in rural service areas. These rules continue to be the root cause of the unnecessary growth in the rural High-Cost program.

All of the proposals in the Public Notice are overly focused on reducing the size and growth of the High-Cost program, and not on achieving the universal service goals of Congress and the FCC. Take, for example, recommendations such as freezing the annual amount of support that states receive for a multi-year period, and freezing rural ILECs' per-line support upon competitive entry. These proposals would jeopardize the sufficiency of support for rural carriers and discourage them from continuing to invest in network infrastructure, particularly the multi-use infrastructure capable of providing advanced services.

There are three major components of the proposals that would be harmful to the continued achievement of universal service in rural service areas. They are: (1) state allocation mechanisms / block grants, (2) calculating costs at the statewide level, and (3) treating rural telephone companies and non-rural carriers the same in the distribution of support.

In 1998, the Joint Board considered and properly rejected a state block grant mechanism. It recognized that there is absolutely no indication in the 1996 Act or legislative history that Congress intended to abandon a proven system in which the FCC determines federal high-cost support amounts for *carriers*. In addition, giving state commissions broad discretion on how to distribute support among ETCs would create an unwelcome sense of uncertainty that would surely inhibit rural ILECs' investment in infrastructure. Furthermore, a block grant system is inefficient and would place significant and unnecessary administrative burdens on state commissions and the FCC. OPASTCO urges the Joint Board to recommend that the FCC continue to calculate federal high-cost support distributions for all rural telephone companies.

The use of statewide costs in determining the total amount of support for all of the ETCs in a state would result in many rural ILECs receiving little, if any, federal funding, due to the unrelated costs of much larger carriers operating in the state. Rural carriers do not serve large, low-cost urban areas with which they can internally average the cost of serving their high-cost customers. Thus, calculating costs at the statewide level could seriously threaten rural ILECs' ability to continue providing high-quality services at affordable and reasonably comparable rates throughout their territories. The Joint Board should therefore recommend that high-cost support for rural ILECs continue to be based on their individual study area average embedded costs.

Treating rural telephone companies and non-rural carriers the same in the distribution of high-cost support fails to consider the unique challenges rural ILECs face in the provision of service. Rural ILECs require more explicit federal high-cost support than non-rural carriers because their territories are almost exclusively rural, with no large, low-cost metropolitan areas with which they can substantially offset the cost of service to their high-cost lines. Therefore, the Joint Board should recommend that separate rural and non-rural high-cost support mechanisms be maintained and that the 1996 Act's definition of "rural telephone company" continue to be used for determining which carriers are "rural" for this purpose.

Competitive ETCs have been the sole cause of the growth that has occurred in the rural High-Cost program over the past four quarters. It stands to reason then, if the Joint Board wishes to address the growth in the rural High-Cost program, it should focus its efforts on reforming the portability rules for competitive ETCs. Specifically, support for competitive ETCs in rural service areas should be based on their own embedded costs. This would effectively eliminate the wasteful payout of windfall support amounts that threaten the Fund's viability. At the same time, it would continue to ensure that all ETCs receive sufficient support to achieve the universal service goals of Congress and the FCC. As an alternative to basing support for competitive ETCs in rural service areas on their own costs, the separate wireless "Portability Fund" suggested in the USERP is worthy of further exploration.

Finally, before recommending any draconian modifications to the high-cost support mechanism for rural ILECs, the Joint Board should give the FCC the opportunity to reform the USF contribution methodology. It should also give states a chance to implement FCC guidelines for minimum ETC eligibility requirements and a stronger public interest analysis. These reforms, along with the elimination of the identical support rule for competitive ETCs in rural service areas, should eliminate any perceived need to alter the high-cost support mechanism for rural ILECs in a manner that would threaten the provision of universal service in rural service areas.

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Federal-State Joint Board on Universal Service Seeks Comment On Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support	)	

COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal-State Joint Board on Universal Service's (Joint Board) Public Notice, released August 17, 2005.[1] The Public Notice seeks comment on four proposals that several Joint Board members and staff have developed to modify the Federal Communications Commission's (FCC, Commission) rules relating to high-cost universal service support.

OPASTCO is a national trade association representing over 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members,

[1] *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, FCC 05J-1 (rel. Aug. 17, 2005) (Public Notice).

which include both commercial companies and cooperatives, together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). OPASTCO members offer a wide array of communications services to rural consumers in addition to the traditional telephone services they provide as ILECs. These include dial-up Internet access, high-speed and advanced services, mobile wireless services, competitive local exchange service, long distance resale, and video services.

OPASTCO is unable to support any of the proposals in the Public Notice as they would all impede the continued achievement of the universal service objectives of the Telecommunications Act of 1996 (1996 Act, the Act) and the Commission in the areas served by rural telephone companies. All of the proposals are overly focused on minimizing the size and growth of the federal High-Cost program without giving adequate consideration to the impact they will have on the provision of service in high-cost rural service areas. The most troubling aspects of the proposals are the use of block grants, the calculation of costs at the statewide level, and the lack of differentiation in treatment between rural and non-rural carriers in the distribution of support. These components, in particular, would have a chilling effect on infrastructure investment and jeopardize the continued provision of affordable, high-quality services, including advanced services, to consumers in rural service areas.

Alteration of the existing high-cost support mechanism for rural ILECs is neither necessary nor desirable. That mechanism, based on study area average embedded costs, is rational, accountable to public and is achieving the universal service objectives of the Act and the Commission. Where reform is needed is in the portability rules for competitive eligible telecommunications carriers (ETCs) in rural service areas. These rules continue to be the root cause of the unnecessary growth in the rural High-Cost program, resulting in finite universal service resources being wasted.

The Joint Board should therefore recommend that the identical support rule be eliminated for competitive ETCs in rural service areas. In addition, the Joint Board should give the Commission an opportunity to reform the Universal Service Fund (USF) contribution methodology, and give states a chance to implement FCC guidelines for minimum ETC eligibility requirements and a stronger public interest analysis. Together, these reforms will sustain the High-Cost program in a manner that enables its objectives to continue to be achieved in rural service areas without undue growth in the size of the Fund.

II. THE PROPOSALS ARE OVERLY FOCUSED ON REDUCING THE SIZE AND GROWTH OF THE HIGH-COST PROGRAM, AND NOT ON ACHIEVING THE UNIVERSAL SERVICE GOALS OF CONGRESS AND THE FCC

In the Public Notice, the Joint Board appropriately seeks comment on how each proposal addresses the goals of the 1996 Act and the Commission's universal service goals. However, none of the proposals themselves address these very questions with much, if any, specificity. In addition, most of the proposals fail to explain what the supposed deficiencies are with the existing high-cost support mechanism for rural ILECs that necessitate the draconian modifications being recommended. Instead, it appears that the primary goal of all of the proposals is to significantly reduce the size and growth of the federal High-Cost program.

For example, under the State Allocation Mechanism (SAM), the total amount of support a state would receive would be frozen for five years.[2] The plan states that this would incent states to maximize consumer welfare by using their support allocations in the most efficient way since "[e]very dollar given to one ETC would be a dollar that could not be given to another."[3] However, this fails to ensure that the universal service goals of the 1996 Act and the Commission would be met.

If the total amount of support allocated to a state is frozen, but the number of competitive ETCs continues to grow, then ultimately no carrier will have sufficient support to provide high-quality services at affordable and reasonably comparable rates throughout their territories.[4] At greatest risk would be continued service to customers in the most remote and highest-cost areas where the rural ILEC is often the only reliable provider of telecommunications services. This would be an incredibly *in*efficient use of high-cost support that would not maximize consumer welfare. Consumer welfare is maximized when high-cost support is used to ensure that a reliable, ubiquitous network remains in place that is capable of providing high-quality services that are comparable to those offered in urban areas and at affordable and reasonably comparable rates.

Moreover, freezing the annual amount of support that states receive for a multi-year period would create a huge disincentive for rural carriers to make new network

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[2] Public Notice, Appendix A, p. 5. "Stage Three" of the Three Stage Package also proposes five year block grants to the states, adjusted annually for changes in inflation. *Id.*, Appendix B, p. 12.

[3] *Id.*, Appendix A, p. 4. In a similar vein, the Three Stage package says that the end result of a frozen multi-year block grant system would be that "states that designate multiple ETCs within the same high-cost area would have to deal with how to pay for those decisions, and still maintain comparable rates." *Id.*, Appendix B, p. 13.

[4] The SAM suggests that FCC guidelines might require states to make a fixed allocation to each ETC for a multi-year period as well. *Id.*, Appendix A, p. 5. However, this would be difficult to do if the amount allocated to each state is frozen for the same multi-year period and new ETCs were designated during that period. Unless the support for the new ETCs came entirely from a state's own universal service fund, the state would be forced to reduce the support levels of existing ETCs in order to provide support to the newly designated carriers.

investments for fear that they would not be able to recover any of those costs from federal high-cost support. The SAM suggests that freezing the amount of support a state receives for a multi-year period would adhere to Congress's directive that support be specific, predictable and sufficient.[5] However, states are not the ones investing in infrastructure and providing service to high-cost customers. That is the role of carriers. Thus, any high-cost support program must ensure that support is specific, predictable and sufficient for individual ETCs – not states – in order for the universal service goals of the Act and the Commission to be achieved.

Another example of the preoccupation with minimizing the size and growth of the High-Cost program can be found in the Three Stage Package. Under "Stage One" of the proposal, rural ILECs' per-line support would be frozen upon competitive entry.[6] The primary reason given for this recommendation, along with the others contained in Stage One, is to "stabilize the fund over the next three to five years…"[7] However, this recommendation fails to consider that it is networks, not lines, that enable rural ILECs to provide the services supported by the High-Cost program. Major components of rural ILECs' network costs are fixed and do not correspondingly disappear when a customer discontinues service to a line. If rural ILECs were uncertain as to whether they will continue to receive support that is sufficient to achieve full recovery of their network costs, they would be reluctant to continue investing in infrastructure, particularly the multi-functional infrastructure capable of providing advanced services.[8] Furthermore,

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[5] *Id.*

[6] *Id.*, Appendix B, p. 8.

[7] *Id.*, p. 10.

[8] *See*, OPASTCO reply comments, CC Docket No. 96-45 (fil. June 3, 2003), pp. 7-11; Rural Telecommunications Associations reply comments, CC Docket No. 96-45 (fil. Sept. 20, 2004), pp. 8-10; OPASTCO comments, CC Docket No. 96-45 (fil. Oct. 15, 2004), pp. 19-20; OPASTCO reply comments, CC Docket No. 96-45 (fil. Dec. 14, 2004), pp. 21-22.

support is not “predictable” if a change in the method of calculation is triggered by an external event (competitive entry), the timing of which cannot be predicted by the ILEC.

The FCC previously rejected a freeze on per-line support upon competitive entry, finding that it may have the unintended consequence of discouraging investment in rural infrastructure.[9] If rural ILECs are to continue providing high-quality services throughout their territories that are reasonably comparable to those offered in urban areas, it is critical that their support amounts be based on their total network embedded costs.

In any event, the primary rationale for proposing a cap on per-line support upon competitive entry is to prevent excessive growth in the Fund that may occur under the existing portability rules if the competitive ETC captures subscriber lines from the incumbent. “Stage One” of the Three Stage Package effectively addresses that issue by recommending that support for competitive ETCs in rural study areas be based on their own costs.[10] OPASTCO wholeheartedly supports this recommendation. While it is essential for the ILEC to continue to receive support based on its total network costs as its line count declines in order to avoid stranded investment, the increase in per-line support translates into pure windfall in the hands of a competitive ETC. By basing support for all ETCs in rural service areas on their own embedded costs, the problem of competitive ETCs receiving irrationally higher per-line support amounts would be eliminated and the potential for uncontrollable growth in the Fund would be significantly reduced.

[9] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11296, ¶129 (2001) (Rural Task Force Order).
[10] Public Notice, Appendix B, p. 9.

In short, the Joint Board must take great care to ensure that the measures it recommends to contain the growth of the High-Cost program and ensure its sustainability would not inadvertently defeat the program's fundamental purposes. Specifically, it must ensure that its recommendations will encourage infrastructure investment in high-cost areas so that rural consumers receive access to high-quality services, including advanced services, that are affordable and reasonably comparable to the services and rates offered in urban areas. The proposals in the Public Notice would fail to achieve these objectives in rural service areas.

III. THERE ARE THREE MAJOR COMPONENTS OF THE PROPOSALS THAT WOULD BE DETRIMENTAL TO THE CONTINUED ACHIEVEMENT OF UNIVERSAL SERVICE IN RURAL SERVICE AREAS: (1) STATE ALLOCATION MECHANISMS / BLOCK GRANTS, (2) CALCULATING COSTS AT THE STATEWIDE LEVEL, AND (3) TREATING RURAL TELEPHONE COMPANIES AND NON-RURAL CARRIERS THE SAME IN THE DISTRIBUTION OF SUPPORT

There are numerous aspects of the four proposals in the Public Notice that are inconsistent with the universal service goals of the 1996 Act and the Commission. OPASTCO will focus on three components that are of significant concern, each of which are common to at least several of the plans.

A. A state allocation mechanism / block grant system is inconsistent with the 1996 Act, would create uncertainty for rural ILECs that inhibits infrastructure investment, and would place unnecessary administrative burdens on state commissions and the FCC

All four of the proposals in the Public Notice would adopt some type of state allocation mechanism or system of block grants to the states. Under such a system, the FCC would calculate the total amount of support that each state receives. State commissions would then have the freedom to determine how they divide the support among the ETCs in their state, subject only to broad FCC guidelines or certain limitations. The Joint Board previously considered and properly rejected such a proposal when it was considering the method of determining high-cost support for non-rural carriers. In its November 25, 1998 Second Recommended Decision, the Joint Board stated:

> …we cannot recommend that the Commission adopt [a block grant] mechanism, in light of the long-standing practice at the time that the 1996 Act became law of distributing federal universal service support to the carriers providing the supported services, and in the absence of any affirmative evidence in the statute or legislative history that Congress intended such a fundamental shift to a state block grant mechanism. In addition, distributing funding directly to state commissions is likely to create substantial administrative burdens for states currently lacking this ability…[11]

Thus, when the Joint Board wisely declined to recommend a system of block grants to the states, it recognized that there is absolutely no indication in the 1996 Act or legislative history that Congress intended to abandon a proven system in which the FCC determines federal high-cost support amounts for *carriers*. Congress was clear regarding the role it wanted states to play in achieving the objectives of universal service. Specifically, Section 214(e) gives states the primary role in determining which carriers will be eligible to receive high-cost support and Section 254(f) provides for voluntary separate state universal service programs. Nowhere in the Act, however, does it empower the Commission to transfer high-cost funds among the states or to cede control over determining federal high-cost support amounts to carriers. The Joint Board should not recommend a different division of state and federal responsibilities for universal service than the one enacted by Congress.

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[11] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Second Recommended Decision, 13 FCC Rcd 24744, 24767, ¶61 (1998).

Beyond the inconsistency with the language of the 1996 Act, a block grant system would create an unwelcome sense of uncertainty that would surely inhibit rural ILECs' investment in infrastructure. Under the SAM, for example, the timeline that is presented suggests that there would be a one year gap between the time the FCC adopts guidelines for states to follow and when the state commissions propose specific distribution amounts for the ETCs in their state.[12] Very few rural carriers would be willing to invest in their network without knowing whether or not they will continue to have access to adequate cost recovery through federal high-cost support. Moreover, the capital markets will be reluctant to lend to rural ILECs without any reasonable assurance that they will be capable of repaying their loans.

The Holistically Integrated Package (HIP) accurately explains why predictable support is so critical for rural carriers:

> Higher cost and potentially risky infrastructure investment will not take place at appropriate levels if carriers cannot predict with a level of certainty just which investments will be supported through USF money. Rural companies are especially vulnerable, facing risks unlike their urban counterparts. Rural carriers face unique construction/networking challenges with a lower subscription population and a lower price change tolerance, leaving them less margin for financial error.[13]

Yet, despite this statement, the HIP provides absolutely no detail on how the FCC would calculate the amount of funding each state would receive or suggest even the broadest of guidelines for how state commissions should distribute support among the ETCs. It is precisely this lack of detail and broad discretion given to state commissions that engenders the unpredictability that the HIP professes concern about. A centralized

[12] Public Notice, Appendix A, p. 6.
[13] *Id.*, Appendix C, p. 16.

federal system for calculating support for rural ILECs provides a far greater degree of certainty and stability than every state in the union developing their own system.

In addition, a block grant system would be an incredibly inefficient method of distributing federal support. It would replace a centrally managed system of calculating federal high-cost support amounts for rural ILECs and other ETCs across the country with 50 separate support distribution systems. This is a tremendous duplication of effort for which there is no need.

A state allocation mechanism would also place significant and unnecessary administrative burdens on state commissions and the FCC. For instance, the FCC would first have to develop a new calculation methodology for determining each state's support allocation and may be required to develop guidelines for state distribution programs. Under one of the plans, the FCC would also have to establish individual rate benchmarks for all 50 states.[14] From there, state commissions would be expected to develop a plan for distributing support to the ETCs in their state. For those states that failed to establish a plan, the FCC presumably would have to step in and create a plan for them.[15] In addition, the FCC may be required to review every one of the states' support distribution plans for compliance with its guidelines and the law. The FCC would also inevitably be forced to address numerous petitions from ETCs that believed the support distribution they received under their state commission's plan was insufficient under the Act. Moreover, there is a reasonable likelihood that some ETCs may challenge their state

[14] *Id.*, Appendix A, pp. 4-5.

[15] By including a provision that requires the FCC to act in the place of states that do not submit plans, the SAM appears to recognize what the Joint Board recognized in 1998. That is, distributing funding directly to state commissions is likely to create substantial administrative burdens for states currently lacking this ability.

commission's plan in court, which would further drain the resources of state commissions and the FCC, as well as the carriers themselves.

There is absolutely no need to erect a cumbersome new layer of bureaucracy in the process for distributing federal high-cost support to rural ILECs. None of the proposals adequately justify how the supposed benefits of a block grant system outweigh the readily apparent administrative costs, burdens and inefficiencies. The existing system under which the FCC determines federal high-cost support amounts for all rural ILECs is time tested, consistent with the 1996 Act, and efficient. Those state commissions that wish to manage a universal service support program can do so by establishing a separate state fund. However, OPASTCO urges the Joint Board to recommend that the FCC continue to calculate federal high-cost support distributions for all rural telephone companies.

B. Calculating costs at the statewide level would leave many rural ILECs with little, if any, federal high-cost support and threaten the provision of universal service in rural service areas

While varying somewhat in the details, most of the proposals in the Public Notice advocate calculating the cost of providing service throughout an entire state, which would be used in determining a state's allocation of federal high-cost support. Only states with total or average costs that exceeded some sort of benchmark would be eligible for support, similar to the mechanism presently used to calculate support for non-rural carriers. OPASTCO is strongly opposed to the use of statewide costs in the calculation of federal support amounts for rural ILECs.[16] It would result in many rural ILECs receiving

[16] *See*, OPASTCO comments, CC Docket No. 96-45 (fil. Oct. 15, 2004), pp. 21-22; OPASTCO reply comments, CC Docket No. 96-45 (fil. Dec. 14, 2004), p. 24.

little, if any, federal high-cost funding, which would be extremely detrimental to the provision of universal service throughout much of rural America.

A state's average costs are primarily determined by the large, non-rural ILECs. Small and mid-size rural carriers, on the other hand, have little bearing on the statewide average. As a result, the use of statewide costs in determining the total amount of support for all of the ETCs in a state would leave many high-cost rural ILECs with insufficient federal funding, due to the unrelated costs of much larger carriers operating in the state.

Furthermore, rural carriers do not serve large, low-cost urban areas with which they can internally average the cost of serving their high-cost customers. Thus, basing support on costs calculated at the statewide level could seriously jeopardize a rural ILEC's ability to continue providing modern services at affordable and reasonably comparable rates throughout its service area. In the absence of a sufficient state support mechanism that entirely offsets the loss of federal support, significant increases in local rates could be necessary, making basic voice grade service unaffordable for some consumers. In addition, the continued deployment of infrastructure capable of providing advanced services would likely grind to a halt, thereby denying the availability of these services to greater numbers of rural consumers.[17] These outcomes would be entirely at odds with the universal service objectives of Congress and the Commission.

In the Rural Task Force Order, the FCC "reject[ed] the assertions of several commenters, notably state commissions, that any universal service support mechanism should provide each area with no more than the amount of support needed to enable the

[17] The HIP states, without any further explanation, that "[e]ventually, the use of statewide average costs can provide an incentive for investment in rural facilities." Public Notice, Appendix C, p. 17. OPASTCO fails to see how drastically reducing, and in some cases eliminating, the availability of federal high-cost support as a source of cost recovery for rural ILECs serving high-cost areas will provide an incentive for infrastructure investment in these territories.

relevant state to ensure reasonably comparable rates among states."[18] The FCC pointed out that when it adopted the high-cost support mechanism for non-rural carriers, that decision did not necessarily mean that it would adopt a similar approach for rural carriers.[19] Three years following the Rural Task Force Order, the Joint Board also acknowledged that statewide averaging "may not be appropriate for the high-cost mechanism providing support to rural carriers."[20] The Joint Board was correct and should therefore recommend that high-cost support for rural ILECs continue to be based on their individual study area average embedded costs.

C. Treating rural telephone companies and non-rural carriers the same in the distribution of high-cost support fails to consider the unique challenges that rural ILECs face in the provision of service

Most of the plans in the Public Notice propose that when distributing support to carriers serving high-cost rural areas, states should not take into consideration whether the carrier is a rural telephone company versus a non-rural carrier. OPASTCO opposes this idea. Rural telephone companies are fundamentally different than large, non-rural carriers and should continue to be treated differently with respect to how their support is calculated and the amount of support they receive.

The type of ILEC serving a particular rural area is highly relevant in determining the appropriate high-cost support mechanism and the amount of support the carrier receives. Large, non-rural carriers serve predominantly low-cost urban and suburban areas. This provides them with their own implicit high-cost support mechanism, with which they can offset the cost of the relatively few rural lines that they serve. Small and

[18] Rural Task Force Order, 16 FCC Rcd 11258-11259, ¶29.
[19] *Id.*, citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20453-20454, ¶45 n.136 (1999).
[20] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 20716, 20728, ¶28 (2002).

mid-size rural telephone companies, on the other hand, simply do not have this ability because their territories are primarily, if not exclusively, rural, with no large, low-cost metropolitan areas. Rural telephone companies therefore require more explicit federal high-cost support to serve a particular high-cost rural area than their non-rural counterparts.

Under all of the plans in the Public Notice, each state would receive a fixed allocation of high-cost support. If state commissions distributed support without considering the type of carrier serving an area, it is likely that, in most cases, more federal support would be directed to the non-rural carriers who have less of a need for it. On the other hand, less support would be directed to rural telephone companies for whom high-cost support represents a critical portion of their cost recovery and in many instances enables them to remain in business. In addition, there would be strong incentives for large, non-rural carriers to use the additional support that they receive to subsidize their competitive low-cost urban areas, in violation of Section 254(e) of the Act.

The Joint Board and the FCC have consistently recognized that "…rural carriers face diverse circumstances and that 'one size does not fit all' in considering universal service support mechanisms that are appropriate for rural carriers."[21] Therefore, the Joint Board should recommend that separate rural and non-rural high-cost support mechanisms be maintained and that the 1996 Act's definition of "rural telephone company" continue to be used for determining which carriers are "rural" for this purpose.[22]

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[21] Rural Task Force Order, 16 FCC Rcd 11247, ¶4.
[22] *See*, OPASTCO comments, CC Docket No. 96-45 (fil. Oct. 15, 2004), pp. 3-7; OPASTCO reply comments, CC Docket No. 96-45 (fil. Dec. 14, 2004), pp. 3-7.

IV. TO CONTAIN THE GROWTH IN THE RURAL HIGH-COST PROGRAM IN A MANNER THAT IS CONSISTENT WITH THE PROGRAM'S OBJECTIVES, THE JOINT BOARD SHOULD FOCUS ITS RECOMMENDATIONS ON THE SOURCE OF THE PROBLEM: COMPETITIVE ETCS AND THE IDENTICAL SUPPORT RULE

In its comments and reply comments earlier in this proceeding, OPASTCO included charts showing the growth in the rural High-Cost program.[23] The charts illustrated that competitive ETCs, not rural ILECs, have been the primary drivers of growth in the rural High-Cost program over the past several years. The chart below updates those previous charts with data from the Universal Service Administrative Company's (USAC) most recent quarterly fund size projections for 4th Quarter 2005, and compares it with fund size projections for 4th quarter 2004, one year prior.[24]

($Millions)	**4th Quarter 2004 Support**	**4th Quarter 2005 Support**	**% Change 4Q 2004 – 4Q 2005**	**Dollar Change 4Q 2004 – 4Q 2005**	**% of Total One-Year Support Increase**
Rural High-Cost Support					
ILEC	$632.6	$625.6	(1.1%)	($7.0)	(32.7%)
CETC	$105.6	$134.0	26.9%	$28.4	132.7%
Total	**$738.2**	**$759.6**	**2.9%**	**$21.4**	**100.0%**

Among other things, this chart shows that support projections for rural ILECs actually declined by $7 million over the past year, making competitive ETCs the sole cause of growth in the rural High-Cost program. In fact, quarterly support projections for

[23] OPASTCO comments, CC Docket No. 96-45 (fil. Oct. 15, 2004), p. 15; OPASTCO reply comments, CC Docket No. 96-45 (fil. Dec. 14, 2004), p. 19.

[24] Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2005* (Aug. 2, 2005), Appendix HC01; Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2004* (Aug. 2, 2004), Appendix HC01.

competitive ETCs in rural service areas grew by $28.4 million over the past year, from $105.6 million to $134 million – an increase of approximately 27 percent.[25]

Therefore, if the Joint Board wishes to address the growth in the rural High-Cost program, it stands to reason that it should focus its attention on the root cause of the growth – competitive ETCs, and in particular, the Commission's rules permitting them to receive the rural ILEC's identical per-line support, based on the ILEC's embedded costs. As OPASTCO has stated earlier in this proceeding, support for competitive ETCs in rural service areas should be based on their own embedded costs.[26] There is no basis to presume that providing competitive ETCs with the ILEC's identical per-line support amount will provide each competitive ETC with "sufficient," but not excessive support, as called for by Section 254(b)(5) of the Act. Basing support for competitive ETCs in rural service areas on their own embedded costs would effectively eliminate the wasteful payout of windfall support amounts that threaten the Fund's viability. At the same time, it would continue to ensure that all ETCs receive sufficient support to achieve the universal service goals of Congress and the FCC.

The Joint Board itself previously expressed concern that "funding a competitive ETC based on the incumbent LEC's embedded costs may not be the most economically rational method for calculating support," but decided that it did not have an adequate record at the time to recommend a change in the basis of support for competitive ETCs.[27]

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[25] The support amounts presented for competitive ETCs reflect both existing competitive ETCs as well as competitive ETC applications that are pending. USAC includes support amounts for yet-to-be approved competitive ETCs in its fund demand, which determines the contribution factor. Therefore, the inclusion of support amounts for pending competitive ETCs is appropriate in this type of analysis, since it is reflected in the contributions that carriers are required to make today.

[26] OPASTCO comments, CC Docket No. 96-45 (fil. Oct. 15, 2004), pp. 12-18; OPASTCO reply comments, CC Docket No. 96-45 (fil. Dec. 14, 2004), pp. 14-20.

[27] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257, 4297, ¶96 (2004) (Portability Recommended Decision). Similarly, the Universal Service

There is now a thorough record in this proceeding upon which the Joint Board can recommend that the identical support rule be eliminated and support for competitive ETCs in rural service areas be based on their own embedded costs.

The Joint Board should also consider recommending the adoption of the interim plan filed by the Rural Telecommunications Associations in the FCC's proceeding on the Joint Board's Portability Recommended Decision.[28] The interim plan would provide wireless competitive ETCs with a "safe harbor" percentage of the rural ILEC's per-line support, with the specific percentage determined by the size of the wireless carrier. This would immediately get the unnecessary growth in the rural High-Cost program under control while new cost accounting rules are being developed for competitive ETCs.

As an alternative to basing support for competitive ETCs in rural service areas on their own costs, the Universal Service Endpoint Reform Plan (USERP) includes a proposal regarding support for wireless competitive ETCs[29] that is worthy of further exploration. Under this proposal, wireless competitive ETCs would be supported through a separate wireless "Portability Fund" which would be capped and would sunset after five years. According to the proposal, wireless carriers who are awarded the funds would be required to use the money to build out their networks to provide additional coverage in unserved areas and along unserved roads.

Endpoint Reform Plan correctly acknowledges that "[p]roviding support to wireless carriers based on wireline costs creates opportunities for financial windfalls." Public Notice, Appendix D, p. 26.

[28] *See*, Rural Telecommunications Associations comments, CC Docket No. 96-45 (fil. Aug. 6, 2004); Rural Telecommunications Associations reply comments, CC Docket No. 96-45 (fil. Sept. 20, 2004). The Rural Telecommunications Associations consist of OPASTCO, the Rural Independent Competitive Alliance (RICA), and the Rural Telecommunications Group (RTG). *See also,* OPASTCO comments, CC Docket No. 96-45 (fil. Oct. 15, 2004), pp. 17-18; OPASTCO reply comments, CC Docket No. 96-45 (fil. Dec. 14, 2004), pp. 19-20.

[29] Public Notice, Appendix D, pp. 26-27.

Wireless carriers have been successfully serving rural markets for years without any high-cost support. In most cases, mobile wireless providers have constructed facilities in rural towns and along major highways where customer density is relatively high and support probably is not needed. Providing a wireless competitive ETC with support based on the ILEC's costs does nothing to encourage them to build out their facilities to serve the less densely populated sections of a service area. Instead, it enables wireless competitive ETCs to subsidize the provision of service to existing customers that they were already able to serve successfully without any high-cost funding. Thus, the USERP's "Portability Fund" proposal has merit because it would provide greater assurance that the funds received by wireless competitive ETCs would be used to achieve expanded service coverage that otherwise may not have occurred absent the receipt of support. This would maximize the public benefit derived from the funds received by wireless competitive ETCs.

Finally, before it considers recommending any radical modifications to the high-cost support mechanism for rural ILECs, the Joint Board should keep in mind that the FCC has an open proceeding on the USF contribution methodology[30] which it is expected to act on shortly. If done properly, reform of the contribution methodology will alleviate some of the strain on the existing base of contributors to the USF. In this regard, the Joint Board should encourage the Commission to use its permissive authority under Section 254(d) of the Act[31] to require all facilities-based broadband Internet access providers over all technology platforms to contribute to the USF. This would help keep

[30] *See, for example, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24983-24987, ¶¶66-100 (2002).
[31] "Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires." 47 U.S.C. §254(d).

the Fund sustainable for the long term as increasing amounts of traffic migrate to broadband platforms.

The Joint Board should also give states an opportunity to adopt minimum ETC eligibility requirements and a stronger public interest analysis in response to the FCC's recently adopted permissive guidelines.[32] The National Association of Regulatory Utility Commissioners (NARUC) has formed a Telecommunications Committee task force designed to facilitate state commission compliance with the FCC Order.[33] This is an encouraging sign. As the Joint Board has said, states' adoption of guidelines for a core set of minimum ETC qualifications should improve the long-term sustainability of the USF as only the most qualified carriers that are capable of, and committed to, providing universal service will be able to receive support.[34] This, along with reform of the contribution methodology and elimination of the identical support rule, should eliminate any perceived need to alter the high-cost support mechanism for rural ILECs in a manner that would threaten the provision of universal service in rural service areas.

V. CONCLUSION

The Joint Board should not recommend any of the four proposals in the Public Notice. All of them are designed, first and foremost, to significantly reduce the size and growth of the federal High-Cost program and would fail to achieve the universal service goals of the 1996 Act and the Commission in the areas served by rural telephone companies. The existing high-cost support mechanism for rural ILECs has been highly successful in achieving universal service in these areas and modification of the

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[32] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005).
[33] "*NARUC Announces Creation of Eligible Telecommunications Carriers Task Force,*" NARUC Press Release (May 5, 2005).
[34] Portability Recommended Decision, 19 FCC Rcd 4261, ¶9.

mechanism is neither necessary nor desirable. Instead, the Joint Board should recommend the elimination of the identical support rule for competitive ETCs in rural service areas, which is the direct cause of the unnecessary growth occurring in the rural High-Cost program. This would contain the growth in the Fund while continuing to ensure that consumers in rural service areas have access to the full range of modern communications services at affordable and reasonably comparable rates.

Respectfully submitted,

THE ORGANIZATION FOR THE PROMOTION AND ADVACEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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September 30, 2005

CERTIFICATE OF SERVICE

I, Brian J. Ford, hereby certify that a copy of the comments of the Organization of the Promotion and Advancement of Small Telecommunications Companies was sent either by electronic mail or first class United States mail, postage prepaid, on this, the 30th day of September, 2005, to those listed on the attached list.

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